

July 17, 2018

Via ECF

Hon. Vince Chhabria
San Francisco Courthouse, Courtroom 4 – 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

**Re: In Re: Facebook, Inc. Consumer Privacy User Profile Litigation,
Case No. 18-md-02843-VC**

Dear Judge Chhabria:

Pursuant to PTO No. 3, Andrew N. Friedman of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) submits this response addressing the Court’s request for information regarding: (A) the core team of lawyers I anticipate would work with me on this litigation and (B) a list of each Northern District of California case on which I have served as Lead Counsel or Co-Lead Counsel.

A. Core Team of Lawyers.

I anticipate the following attorneys would constitute the core team of lawyers working with me on this litigation.

Geoffrey Graber

Geoffrey Graber is a Partner at Cohen Milstein and a member of the Consumer Protection practice group. In this role, Mr. Graber specializes in complex litigation aimed at protecting consumers deceived and harmed by consumer service providers such as banks, insurance and health care companies. Currently, Mr. Graber is working on several high-profile litigation matters, including *Democratic Nat’l Comm. v. The Russian Federation et. al.* (S.D.N.Y.) alleging, *inter alia*, that the Trump campaign engaged in racketeering and conspired with Russia and WikiLeaks to help Donald Trump with the 2016 presidential election. The allegations include violations of several federal privacy laws, including the Computer Fraud and Abuse Act, Wiretap Act, Stored Communications Act, and Digital Millennium Copyright Act. He is also one of the principal counsel working on *Barnett et al. v. Facebook, Inc.* (N.D. Cal.), a case alleging that Facebook provided inflated metrics regarding video ads by overstating the length of time viewers typically spent watching such ads.

Mr. Graber was also involved in all aspects of litigating the lawsuit arising out of the massive data breach at Anthem Inc. that compromised the personal identification and health information of more than 80 million customers of the health care company.

Prior to joining the firm in 2015, Mr. Graber served as Deputy Associate Attorney General and Director of the Residential Mortgage-Backed Securities (RMBS) Working Group at the United States Department of Justice (“DOJ”). As Director of the RMBS Working Group, Mr.

Graber oversaw the DOJ's nationwide investigation into the packaging and sale of mortgage-backed securities leading up to the financial crisis. He supervised and coordinated the efforts of over 100 prosecutors, lawyers, investigators and analysts from the DOJ. Mr. Graber also worked closely with senior officials from the United States Securities & Exchange Commission, the Department of Housing and Urban Development, the Inspector General's Office for the Federal Finance Agency and the offices of more than 10 state attorneys general. The investigations overseen by Mr. Graber ultimately recovered more than \$36 billion. These recoveries include the record-breaking \$16.65 billion settlement reached in August 2014 with Bank of America – the largest settlement with a single entity in U.S. history – as well as settlements with Citigroup (\$7 billion) and JP Morgan (\$13 billion).

In 2014, Mr. Graber received the Attorney General's Distinguished Service Award for his work relating to the \$13 billion settlement with JP Morgan – including, at the time, the largest Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") penalty recovered by the Department of Justice. In October 2015, he again received the Attorney General's Distinguished Service Award for his work on the successful investigation of and litigation against S&P.

Earlier in his tenure at the DOJ, Mr. Graber served as Counsel in the Civil Division, where he proposed and then led the three-year investigation of Standard & Poor's and its ratings of structured finance products from 2004 to 2007. As the lead lawyer overseeing the investigation, he supervised a team of over 50 prosecutors, DOJ lawyers, investigators and analysts. The investigation, which made groundbreaking use of FIRREA, resulted in the largest enforcement action filed by the United States concerning the financial crisis (*United States v. Standard & Poor's*).

Before joining the Department of Justice, Mr. Graber was an associate at a top-tier defense firm, where he defended Fortune 500 companies and their officers and directors in securities and derivative suits, consumer class actions and government investigations. Mr. Graber also devoted substantial time to pro bono representation of indigent individuals and families in civil rights actions against local law enforcement.

Mr. Graber received his undergraduate degree in Philosophy from Vassar College, and earned his law degree from the University of Southern California Law School, where he served as the Managing Articles Editor on Southern California Law Review.

Douglas J. McNamara

Douglas J. McNamara is Of Counsel at Cohen Milstein, and a member of the firm's Consumer Protection practice group. Mr. McNamara graduated law school in 1995, and after working as a public defender and then an associate at Arnold & Porter, joined Cohen Milstein in 2001. Mr. McNamara specializes in litigating complex, multi-state class action lawsuits against manufacturers and consumer service providers such as banks, insurers, credit card companies and others. He has worked extensively on major MDL cases, drafting briefs and discovery, selecting, defending, and deposing experts, and overseeing document discovery and depositions. Mr. McNamara was recently selected as a member of the executive committee with respect to

experts for the plaintiffs in *In Re: Apple Inc. Device Performance Litig.*, MDL No. 5:18-md-02827 (N.D. Cal.).

Mr. McNamara handled daily litigation activities in *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Marketing, Sales Prac. and Prod. Liab. Litig.*, MDL No. 1:15-md-02627 (AJT/TRJ) (E.D. Va.) (preliminarily approved \$36 million settlement regarding allegedly defective flooring), *In re Caterpillar, Inc., C13 and C15 Engine Products Liability Litigation*, MDL No. 2540, main docket, 1:14-cv-03722 (JBS)(JS) (D.N.J.) (\$60 million settlement regarding allegedly defective heavy duty diesel truck engines), and *Khoday v. Symantec Corp.* (D. Minn.) (\$60 million settlement in case alleging misrepresentations regarding an electronic download service). These cases included extensive discovery, and development of damage models for class certification treatment that facilitated settlement. Mr. McNamara has worked on numerous other cases involving defective consumer products deceptive marketing, including cases against Polaris, Purdue Pharma, Philips Electronics North America Corp., General Motors, and DISH TV.

Mr. McNamara has been the lead author on several law review articles including: “Buckley, Imbler and Stare Decisis: The Present Predicament of Prosecutorial Immunity and An End to Its Absolute Means,” 59 ALBANY LAW REVIEW 1135 (1996); “Sexual Discrimination and Sexual Misconduct: Applying New York’s Gender-Specific Sexual Misconduct Law to Minors,” 14 TOURO LAW REVIEW, 477 (Winter 1998), and most recently, “Reexamining the Seventh Amendment Argument Against Issue Certification,” 34 PACE LAW REVIEW 1041 (2014). He has also written for legal practitioners including on economic damage theories in consumer class actions, and federal preemption decisions. *See, e.g.*, “*Carriuolo v. GM* and the Future of the Overcharge Theory,” June 2, 2016, <https://www.law360.com/articles/802562/carriuolo-v-gm-and-the-future-of-the-overcharge-theory>, (describing the overcharge damage theory) and “What Were They Smoking? Why the *Graham* Court Was Wrong,” (May 14, 2015), <https://www.law360.com/articles/653698/what-were-they-smoking-why-the-graham-court-was-wrong> (correctly predicting the full Eleventh Circuit would vacate a preemption decision in cigarette litigation). He has served as adjunct faculty at the George Washington University Law School teaching a complex civil litigation class on Environmental and Toxic Torts.

Sally Handmaker Guido

Ms. Handmaker Guido is an associate and a member of the firm’s Consumer Protection practice group, litigating actions to enforce consumer rights under federal and state laws. Ms. Handmaker Guido graduated from the University of Virginia School of Law in 2011 and joined Cohen Milstein in 2014 after serving as a litigation associate at a top-tier defense firm, working on complex commercial and general litigation matters in federal and state courts.

Ms. Handmaker Guido has been the lead associate in several highly-successful consumer class actions in which she was involved in all aspects of litigation including: *In re Anthem, Inc. Data Breach Litig.* (N.D. Cal.) (preliminarily approved seminal \$115 million settlement on behalf of data breach victims), *Khoday v. Symantec Corp.* (D. Minn.) (\$60 million settlement in case alleging misrepresentations regarding an electronic download service), *In re Caterpillar Engine Prod. Liab. Litig.* (D.N.J.) (\$60 million settlement in case involving allegedly defective

engines), *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Marketing, Sales Prac. and Prod. Liab. Litig.* (E.D. Va.) (preliminarily approved \$36 million settlement regarding allegedly defective flooring), and *Martin v. Trott Law PC et al.* (E.D. Mich.) (preliminarily approved \$7.5 million settlement in fair debt class action). She has been a key contributor to other significant consumer class actions including *In Re: Vizio, Inc., Consumer Privacy Litig.* (C.D. Cal.) (settlement agreement to be finalized next month) and the ongoing *In re Equifax, Inc., Customer Data Security Breach Litig.* (N.D. Ga.). She was awarded the *pro bono* “Golden Gavel” award for work with the Lawyers’ Committee for Civil Rights Under Law’s Voting Rights Project and is an active member of Women in e-Discovery, a nonprofit organization focused on providing women with legal technology education, networking, and leadership opportunities. She is also an active member of the American Association for Justice and The Sedona Conference.

Ms. Handmaker Guido has written for legal practitioners including on economic damage theories in consumer class actions and ghostwritten objections to class action settlements. *See, e.g.*, “Good Counsel: Using Conjoint Analysis to Calculate Damages,” July 2, 2018, https://www.cohenmilstein.com/sites/default/files/AAJ_Trial_Conjoint_Analysis_July_2018_Handmaker.pdf, and “Ethical Concerns and Suggested Approaches to Ghostwritten Class Action Objections,” https://www.cohenmilstein.com/sites/default/files/Ethical_Concerns_Suggested_Approaches_Ghostwritten_Class_Action_Objection_SMH.pdf.

Julia Horwitz

Julia Horwitz is an Associate at Cohen Milstein and a member of the Firm’s Employee Benefits Practice Group. In her role, Ms. Horwitz represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country. Ms. Horwitz is also one of two associates working on the matter *Democratic National Comm. v. The Russian Federation et. al.* now pending in the Southern District of New York alleging, *inter alia*, that the Trump campaign engaged in racketeering and conspired with Russia and WikiLeaks to help Donald Trump with the 2016 presidential election. The allegations include violations of several federal privacy laws, including the Computer Fraud and Abuse Act, Wiretap Act, Stored Communications Act, and Digital Millennium Copyright Act.

Prior to joining Cohen Milstein, Ms. Horwitz served as a law clerk for the Honorable Mary Ellen Coster Williams at the United States Court of Federal Claims. She worked at the Electronic Privacy Information Center (“EPIC”) in DC from 2012-2015, first as an Open Government Coordinator and Counsel, and then as the Director of the Consumer Privacy Project. While at EPIC, Ms. Horwitz co-edited a book entitled Privacy in the Modern Age: The Search for Solutions (available at <https://www.epic.org/privacy-book/>), which discusses privacy-related practices, policy, and technology design and proposes solutions. She also co-authored several privacy-related *amicus* briefs, including: *Smith v. Obama*, about the Foreign Intelligence Surveillance Court’s authorization of National Security Administration’s collection of telephone call metadata from providers like Verizon and AT&T; *In re Nickelodeon Privacy Litig.*, about how much transactional data a website can collect about a user before the user becomes “identifiable” under the Video Privacy Protection Act; *FTC v. Wyndham*, regarding Federal

Trade Commission (“FTC”) authority to bring a data security action against a hotel chain for a massive data breach under section 5 of the FTC Act; and *Fraley v. Facebook*, regarding the sufficiency of a settlement with Facebook that permitted Facebook to continue violating state and federal privacy laws. Ms. Horwitz was also an Adjunct Professor at Georgetown Law School for a semester in 2013.

Ms. Horwitz attended Brown University, graduating with a B.A. in English, magna cum laude, in 2008. She earned her J.D. from the University of Chicago Law School in 2012. During law school, Ms. Horwitz was a staff member on the Edwin F. Mandel Legal Aid Clinic Employment Discrimination Project, the Intellectual Property Law Society’s Vice President for Online and Media, and competed in the 2011 International Trademark Association’s Saul Lefkowitz Moot Court. She was also a recipient of the 2011 Charles H. March Fellowship at the FTC and the International Association of Privacy Professionals 2012 Summit scholarship.

Eric A. Kafka

Eric A. Kafka is an Associate at Cohen Milstein, and a member of the firm’s Consumer Protection practice group. Mr. Kafka’s practice focuses on litigating class actions on behalf of consumers who have been deceived and harmed by large corporations. Mr. Kafka is the lead associate in several complex and ongoing consumer class actions in which he is involved in all aspects of litigation. Specifically, Mr. Kafka worked extensively on the *In re Anthem, Inc. Data Breach Litig.* and serves as the lead associate on *Johannesson v. Polaris Industries, Inc.*, a case alleging defective ATV designs that cause injuries and damage to the vehicles, and *Barnett et al. v. Facebook, Inc.* (N.D. Cal.), a case alleging that Facebook provided inflated metrics regarding video ads by overstating the length of time viewers typically spent watching such ads.

Prior to joining Cohen Milstein, Mr. Kafka was a litigation associate at a top-tier defense firm, working on complex commercial and general litigation matters.

Prior to attending law school, Mr. Kafka worked on multiple political campaigns, including President Obama’s 2008 presidential campaign. Mr. Kafka earned his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar for superior academic achievement. He received his B.A. from Yale University.

B. Experience as Lead, Co-Lead or Principal Counsel in the Northern District of California.

I have served as Lead, Co-Lead or one of the principal counsel (where no formal “lead counsel” was chosen) in the following cases in the Northern District of California:

- *In re Anthem, Inc. Data Breach Litig.*, Case No. 15-MD-02617-LHK (Hon. Lucy H. Koh). I served as Co-Lead Counsel in reaching a \$115 million data breach settlement that has been preliminarily approved. Final approval is expected later this month.
- *Parker et al. v. Dish Network Corp. et al.*, Case No. 4:11-cv-01457-PJH (Hon. Phyllis J. Hamilton). I served as one of the principal counsel in a consumer class action involving rate increases charged to customers who believed their rates were locked-in for the first

year of their 24-month commitment term. The case resulted in a settlement providing millions of dollars in free services and credits to class members, as well as a covenant that DISH would not raise rates for a certain time period for certain packages.

- *Ferrington et al. v. McAfee, Inc.*, Case No. 5:10-cv-01455-LHK (Hon. Lucy H. Koh). I served as one of the principal counsel in a consumer class action alleging that McAfee's website led consumers to enroll unwittingly in a subscription-based services provided by a third party from which McAfee profited on a per customer basis. The case settled for a minimum of \$1.2 million in cash and vouchers being made available to the class.
- *Barnett et al. v. Facebook, Inc.*, Case No. 3:16-cv-06232 (Hon. Jeffrey S. White). I serve as one of the principal counsel working on a case alleging that Facebook provided inflated metrics regarding video ads by overstating the length of time viewers typically spent watching such ads. The case is in discovery.
- *Palumbo v. iPass, Inc. et al.*, Case No. 3:05-cv-00228-MHP (Hon. Marilyn H. Patel). I served as one of the principal counsel in a securities class action alleging that an operational failure hindered access to the iPass service, resulting in a loss of customers and decline in revenue, earnings, and growth prospects. The case also involved allegations of insider trading. The court dismissed the case with prejudice.
- *Ubaldi v. SLM Corp.*, Case No. 3:11-cv-01320 (Hon. Elizabeth D. Laporte). I served as Co-Lead Counsel in a class action alleging Navient Corp. charged illegal late fees on student loans on behalf of a certified class of California borrowers. The case settled, providing compensation to the borrower class while plaintiffs' counsel did not request a fee.

My partners at Cohen Milstein have also had significant success serving as lead or co-lead counsel in the Northern District of California and could assist as needed. For example:

- *In re Google Inc. Street View Electronic Communications Litigation*, Case No. 3:10-md-02184 (Hon. Charles R. Breyer). Daniel A. Small serves as Co-Lead Counsel in a suit on behalf of a nationwide class regarding Google's intentional interception of electronic communications sent over their open, non-secured wireless internet connections through its use of vehicles sent to capture images for its "Street View" technology. This matter is ongoing.
- *In re Animation Workers Antitrust Litig.*, Case No. 14-cv-4062-LHK (Hon. Lucy H. Koh). Daniel A. Small served as Lead Counsel in reaching a \$168.5 million settlement in a case involving allegations that the defendants conspired to suppress compensation by agreeing not to solicit each other's employees and by coordinating compensation policies.
- *In re Resistors Antitrust Litig.*, 3:15-cv-03820-JD (Hon. James Donato). Kit A. Pierson serves as Lead Counsel in a case alleging that defendants participated in a conspiracy to fix the prices of linear resistors from July 2003 to December 2005. This matter is ongoing.

- *Mulligan v. Impax Labs. Inc., et al.*, Case No. 3:13-cv-01037 (Hon. Edward M. Chen). Cohen Milstein, principally led by Daniel S. Sommers, reached an \$8 million settlement in a case alleging that Impax downplayed U.S. Food and Drug Administration concerns over quality control at a California plant.

Given my experience and the firm's resources, I am confident I can be an asset to the Plaintiff Class and respectfully request appointment as Lead Counsel.

Respectfully Submitted,

/s/ Andrew N. Friedman

Andrew N. Friedman